August 5, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW, CY-B402
Washington, D.C. 20554

Re: In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina; WC Docket No. 02-150

Dear Secretary Dortch:

Enclosed please find one electronic filing for the above-referenced proceeding.

Sincerely,

George M. Fleming
General Counsel

GMF/cml
Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina	**WC Docket No. 02-150**

REPLY COMMENTS OF THE MISSISSIPPI PUBLIC SERVICE COMMISSION

I. Introduction and Executive Summary

The Mississippi Public Service Commission ("Mississippi Commission") continues to strongly support BellSouth's Section 271 Application to provide interLATA services originating in Mississippi. As we explained in our Consultative Report, we have worked hard, along with all the other state Commissions, to ensure that BellSouth is in compliance with all applicable laws, requirements, and regulations, and that the CLECs' path to entry into the local market is not blocked.

Our confidence that this Application should be approved is strengthened by the comments that have been filed in this proceeding. For each of the five states, the state Commission continues to support BellSouth's filing. Indeed, every single Commissioner in all five states supports approval. The Alabama Public Service Commission and the North Carolina Utilities Commission have now also submitted new detailed evaluations that, like the evaluations of the Mississippi, Kentucky, and South Carolina Commissions, confirm that BellSouth has met all legal requirements.

These independent and expert state Commissions have every incentive to enhance competition in their states, and no commenter contests that each of these states has held extensive, open proceedings before reaching its conclusion. We respectfully submit that the FCC should rely heavily on the consistent, considered judgment of all these Commissions as to the remaining issues in dispute here. As the *Texas Order* states at paragraph 51, the FCC "does not have the time or the resources to resolve the enormous number of factual disputes that inevitably arise" during a Section 271 case, and it gives "substantial weight" to the findings of the state Commissions when they are made after extensive open proceedings.

The CLEC comments also confirm that those companies can in fact compete in BellSouth's markets. Many commenters raise run-of-the-mill disputes involving contract interpretation, billing, or carrier-specific concerns that fail to establish CLECs lack a meaningful opportunity to compete. At least as important, many commenters focus on issues where BellSouth's performance has actually improved since the Georgia/Louisiana proceeding and where state Commissions are supervising further attempts at improvement.

As we discuss more below, change control is a good example here. Although AT&T and WorldCom lead with this issue, they do not dispute that BellSouth has implemented a long series of improvements since the Georgia/Louisiana proceeding, many of which are substantial. Additionally, they acknowledge that the Georgia Commission is in the midst of resolving the remaining disputes, where again BellSouth has proposed substantial changes. In this regard, it is our understanding that the Florida Commission has recently concluded that BellSouth's proposal for allocating capacity in future releases is in fact a reasonable one. These facts show both that BellSouth has acted reasonably and responsibly, and that continuing state supervision, as well as other means of enforcement, can be trusted to resolve remaining disputes between BellSouth and its competitors. Indeed, it was the Mississippi Commission (along with several others) that required BellSouth to implement "Single C" migration and a parsed CSR, both of which enhance BellSouth's OSS.

CLECs also raise pricing issues that were properly resolved based on the record evidence during the Mississippi Commission proceedings. Indeed, in almost all cases, these same CLEC arguments (such as those involving multiple loop modeling scenarios and loading factors) were unanimously rejected by the state Commissions. Those decisions were reasonable, and they accord with prior FCC decisions.

CLECs also raise a number of pricing issues that were not even mentioned in proceedings before the Mississippi Commission. Indeed, AT&T did not file any testimony in the Mississippi UNE case, but now purports to criticize the results reached there based on arguments that no party presented. This should not be countenanced. Parties that are concerned with whether rates in Mississippi are consistent with local competition should raise their claims before the Mississippi docket, not wait until a later FCC Section 271 proceeding in the hopes of limiting long-distance competition. In any event, the prices we have set for BellSouth's UNEs are based on BellSouth's costs of providing them, and they are fully compliant with TELRIC.

II. The Issues Raised by CLECs Here Are Being Resolved Through State Mechanisms

The FCC has recognized that state Commissions have played an important role in ensuring that BellSouth's markets are open. In the Georgia/Louisiana case, the FCC expressly noted the hard work of the Georgia and Louisiana PSCs in establishing performance measurement and enforcement plans and, in the case of the Georgia PSC, overseeing an extensive third-party test. *See GA/LA Order* ¶ 2. As we stated in our initial filing, the Mississippi Commission took advantage of that hard work, and also insisted that BellSouth adopt "Single C" conversions for UNE-P and a parsed CSR to respond to CLEC concerns on those issues. *See* Final Order at 43-44, 55-56, *Consideration of the Provision of In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96*, Docket No. 97-AD-321 (Oct. 4, 2001) ("*Final 271 Order*"). Both of those improvements are now in place in Mississippi, and judging from the comments, are working well. These features' successful implementation and continued improvement, such as the recent addition of hunting features to the parsed CSR functionality, *see* MPSC Consultative Report at 5 (July 11, 2002), are a testament to the effectiveness of the state Commissions in BellSouth's region in opening local markets to competition.

State Commissions are also handling, and will continue to supervise, the few remaining disputes that are stressed in the comments. Change control – the first issue discussed by both AT&T and WorldCom – provides an important example here. As the FCC knows, change control allows CLECs to request improvements in BellSouth's systems that will assist them in competing in local markets.

Although the FCC found BellSouth's change control process ("CCP") satisfactory in the *GA/LA Order*, BellSouth has been working with CLECs under the auspices of the Georgia PSC to improve that process even further. The CLECs thus do not dispute that BellSouth has recently adopted verbatim the CLEC definition of a "CLEC-affecting" change that triggers the CCP, that BellSouth has increased the scope of the CCP, that BellSouth now provides increased release capacity information, and that it has taken numerous other steps. *See* Stacy Aff. ¶ 82. Thus, while there are still issues in dispute, they have been whittled down significantly as a result of the Georgia PSC process and BellSouth's good faith actions.

It also appears that the relatively few issues now remaining are a CLEC "wish list" and are not the result of BellSouth's failure to propose good faith improvements beyond what has already been found to be lawful. While both AT&T and WorldCom highlight the alleged flaws in BellSouth's proposal to allocate future release capacity and thus address pending CLEC change requests, just days ago, the Florida PSC unanimously approved as reasonable a BellSouth-proposed plan for allocating those resources. *See* Vote Sheet, *Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786B-TL (Fla. PSC July 23, 2002). This fact shows that state Commissions are continuing to move forward to resolve these issues and that, contrary to CLEC claims, BellSouth is handling these issues in a reasonable, good faith manner. The Florida PSC has also recently required BellSouth to create performance metrics and penalties relating to release defects, another concern that some CLECs have raised.

The CCP process established and supervised by state Commissions is also providing effective solutions to other CLEC issues. For instance, in response to the DSL USOC problem that Birch has raised, BellSouth, working through the CCP, has developed not only an interim process but also a permanent solution that is scheduled to be implemented by the end of this year. *See* Ainsworth Aff. ¶¶ 225-228.

Similarly, the state Commissions provide a wholly sufficient forum to address any residual issues regarding flow-through, an issue that AT&T discusses. As an initial matter, we understand the FCC precedent to place significantly less importance on flow-through alone than AT&T's emphasis on the point would suggest. Because BellSouth generally performs well on Firm Order Conformation (FOC) and reject timeliness and service order accuracy (*see* BellSouth Br. at 82-83, 86-87; Varner Aff. Exhs. PM-2 to –6, ¶¶ 40-44 (B.1.4, B.1.7.1 - B.1.7.17, B.1.8.1 - B.1.8.17), ¶¶ 45-48 (B.1.9, B.1.12, B.1.13), ¶ 65 (B.2.34) & Attachs. 1-3) and because some CLECs achieve high flow-through (*see* BellSouth Br. at 84; Stacy Aff. ¶ 285) this should not be a significant issue under FCC precedent. *See GA/LA Order* ¶ 143 (FCC does not "center" its analysis on flow-through where these other factors are present). Nevertheless, it is worth noting that the Florida PSC has recently addressed this issue by, among other things, raising performance penalties for failure to reach flow-through benchmarks and requiring BellSouth to submit a plan to improve flow-through. *See* Order No. PSC-02-0989-PAA-TP, *Investigation into the Establishment of Operations Support Systems Permanent Performance Measures For Incumbent Local Exchange Telecommunications Companies (BellSouth Track)*, Docket No. 000121A-TP (Fla. PSC July 22, 2002). Again, the residual CLEC issues that are being raised here are being fully addressed in state proceedings, and there is no reason to believe that BellSouth's performance will not continue to improve in those areas.

III. There Is No Basis To Conclude that BellSouth's Mississippi UNE Prices Are Not TELRIC-Based

The Mississippi Commission has been extremely careful to ensure that rates for UNEs in Mississippi are consistent with the FCC's TELRIC requirements. We adjusted BellSouth's inputs in its TELRIC-compliant pricing models, and then we discounted them even further. *See generally* Final Order, *Generic Proceeding to Establish BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Elements and Services*, Docket No. 00-UA-999 (Oct. 12, 2001) ("*Final Pricing Order*"). We believe that our UNE rates are compliant with every aspect of TELRIC, and we are very certain that nothing raised here comes close to showing that "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." *GA/LA Order* ¶ 23 (internal quotation marks omitted). In this regard, we stress again that no party has sought reconsideration or filed any sort of appeal of our *Final Pricing Order*. That fact speaks volumes about the lack of any clear legal or factual flaw in our decision. To the extent that the issues raised here were presented to us (which, as discussed below, is not true as to some arguments), they were reasonably addressed based on the record evidence.

WorldCom argued that BellSouth's prices for OSS are not TELRIC compliant. WorldCom bases this argument exclusively on the factual claim that BellSouth "double counted" certain costs. WorldCom Br. at 11; Frentup Decl. ¶¶ 26-28 & Attach. 1. That is simply wrong, as we found in our order on this issue. *Final Pricing Order* at 27; *see also GA/LA Order* ¶ 93. ("BellSouth provides evidence that the company identified and removed costs that are directly assigned in the cost studies from the development of the shared and common factors.").

WorldCom also notes that BellSouth's OSS rates are higher than in Georgia and Louisiana. WorldCom Br. at 11; Frentup Decl. ¶¶ 26-28. Absent a showing of a TELRIC violation, however, this fact should be irrelevant. The FCC has recognized that rates for UNEs can and do differ among states, even though both states' rate-setting methods fully comply with TELRIC. *See GA/LA Order* ¶ 24 ("The Act contemplates the states independently setting rates based on federally established guidelines. It is important to recognize both that costs may vary between states and that state Commissions may reach different reasonable decisions on matters in dispute while correctly applying TELRIC principles."). As with all of BellSouth's UNE rates, we carefully studied this OSS charge and determined it to be TELRIC-compliant. *Final Pricing Order* at 27; *see also KPSC UNE Pricing Order* at 32.

WorldCom makes a similar claim about the Optional Daily Usage Files ("ODUF") and Access Daily Usage Files ("ADUF") charges, alleging that they "amount to double recovery." WorldCom Br. at 12; Frentup Decl. ¶¶ 5, 22-25. After careful review, we found that "the computer resources required to implement and support the[se] programs are appropriately reflected in BellSouth's cost study." *Final Pricing Order* at 43-44. We concluded that since these costs are "incremental to BellSouth's normal billing process[es,] [t]hey are directly caused by CLECs and BellSouth does not benefit from the production of daily usage files," BellSouth "is entitled to recover these costs from CLECs." *Id.* at 44. We rejected WorldCom's "double recovery" argument, and so should this Commission. BellSouth removed any costs that were directly identified as shared and common. *Id.*

WorldCom also alleges that the loop pricing model used by BellSouth in Mississippi is "fundamentally flawed." WorldCom Br. at 14-15; Frentup Decl. ¶¶ 11-15. We extensively evaluated the BellSouth Telecommunications, Inc. Loop Model ("BSTLM") and found it to be reasonable. *Final Pricing Order* at 8, 11. In fact, we specifically rejected WorldCom's contention that the use of multiple scenarios violates the FCC's pricing rules, just as the state Commissions in Florida, Louisiana, Alabama, Kentucky, and South Carolina have. *Id.* at 11; *APSC UNE Pricing Order* at 24; *KPSC UNE Pricing Order* at 13; *SCPSC UNE Pricing Order* at 5-6.

WorldCom also argues that the Mississippi Commission, along with all the other state Commissions, erred in accepting BellSouth's application of loading factors to material price inputs to calculate the total installed investment. WorldCom Br. at 16-17; Frentup Decl. ¶¶ 16-21. We concluded in our *Final Pricing Order* that WorldCom's concern that this practice distorts the cost of larger facilities is not applicable, especially in Mississippi, where less than 3 percent of cable is placed in larger (greater than 400 copper pairs) facilities. *Final Pricing Order* at 20. Again, WorldCom has shown no clear TELRIC error or even an unreasonable factual decision on a crucial point.

AT&T levels a number of criticisms against BellSouth's rates for switching. AT&T Br. at 34-39; Pitts Decl. ¶¶ 5, 10-25. AT&T, however, did not file any testimony in our pricing proceeding, and no other party raised any of these issues regarding BellSouth's switching rates. We agreed with BellSouth that switch features create incremental costs, and that it was appropriate for BellSouth to recover those costs. The arguments made by AT&T were not presented to us, and AT&T should not be able to derail this Application based on claims that were never presented in the appropriate forum, the Mississippi Commission. *See Vermont Order* ¶ 20 ("AT&T and WorldCom raise new complaints that they never brought before the Vermont Board, and have failed to demonstrate that the Vermont Board committed any clear error."); *GA/LA Order* ¶ 49 ("[I]t is both impracticable and inappropriate for us to make many of the fact-specific findings the parties request concerning IDLC and UDLC.").

AT&T similarly argues that the DUF charges in Mississippi are too high. AT&T Br. at 31; Turner Decl. ¶¶ 6-16, 23-25. Again, AT&T did not raise this issue during our proceeding; indeed, it did not even bother to file any testimony in our UNE pricing proceeding. It asserts claims here that no party raised during the Mississippi proceeding, and that we did not have a fair chance to evaluate. Its claims should be rejected, and BellSouth's rates should be found to be TELRIC-compliant.

IV. Conclusion

We are grateful for this opportunity to participate in this important proceeding for Mississippi consumers. We recommend that the FCC grant this Application, which will bring significant competitive benefits to the economy of our state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, George M. Fleming, Counsel for the Mississippi Public Service Commission, hereby certify that a copy of the foregoing Reply Comments of the Mississippi Public Service Commission has been served upon counsel for BellSouth Corporation, the Department of Justice, Alabama Public Service Commission, Kentucky Public Service Commission, North Carolina Public Service Commission, and South Carolina Public Service Commission, via the United States Mail, postage prepaid, this 5th day of August, 2002.

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George M. Fleming